

Compliance review of a pension scheme with
the Supplementary Protocol No 1 to the ECHR :
control of proportionality between the
financial constraints of the contributory
pension scheme for lawyers and the pension
rights of the insured

28/10/2021



Ruling no 402 of 12 May 2021 (19-20.938) - *Cour de cassation* (Court of Cassation) - Second Civil Chamber
- ECLI:FR:CCAS:2021:C200402

Partial Quashing

Only the french version is authentic

Summary

Article 1 of Supplementary Protocol No 1 to the Convention for the Protection of Human Rights and Fundamental Freedoms provides , when a person is subject to compulsory membership of an essentially contributory pension scheme, there should be a reasonable relationship of proportionality expressing a fair balance between the funding requirements of the pension scheme in question and the individual pension rights of contributors.

The so-called "clause de stage" in the basic pension scheme for lawyers, resulting from Articles L. 723-11 and R. 723-37, 3° of the Social Security Code, then applicable, provides that an insured person who has not paid sixty quarterly periods of contributions is entitled to a fraction of the allowance for older salaried workers on the basis of this period.

For an insured person who does not have sixty quarters of insurance contributions - a significant period in terms of the length of a professional career - the "clause de stage" only provides a fraction of the allowance for older salaried workers as payment. This is a clearly disproportionate amount with relation to the total contributions payable during the period in which the rights are constituted. Although the "clause de stage" contributes to the financial balance of the pension scheme concerned, it excessively infringes on the guaranteed fundamental right of the objective it pursues, and does not strike a fair balance between the interests involved.

Appellant(s): Mr [A][X]

Respondent(s): Caisse nationale des barreaux français (National fund for members of the French Bar)

Facts and procedure

1. According to the ruling under appeal (Paris, 13 June 2019), Mr [X] (the insured), who practised as a lawyer from 1975 to 1990, applied for the settlement of his retirement rights on 17 November 2015. On 18 March 2016, the Caisse nationale des barreaux français (the Caisse) issued him with a pension certificate granting him, as of 1 January 2016, under the basic pension scheme, the allowance for older salaried workers, fractioned to 58/60ths.

2. The insured person challenged the terms of payment of his pension and appealed to a tribunal de grande instance (Tribunal of First Instance).

Reviewing plea raised by the Court of its own motion

3. After notice given to the parties in accordance with Article 1015 of the Civil Procedure Code, Article 620,

paragraph 2 of the same Code shall be applied.

Considering Article 1 of Supplementary Protocol No 1 to the Convention for the Protection of Human Rights and Fundamental Freedoms, Articles L. 723-11 and R. 723-37, 3° of the Social Security Code, the latter two then applicable:

4. The first of these texts provides that when a person is subject to compulsory membership in an essentially contributory pension scheme, there should be a reasonable relationship of proportionality expressing a fair balance between the funding requirements of the pension scheme in question and the individual pension rights of contributors.

5. According to the second, an insured person subject to the pension scheme for lawyers who cannot justify sixty quarters of insurance contributions - a period set by the latter - is only entitled to a fraction of the allowance for older salaried workers on the basis of this period.

6. The individual right to a pension constitutes a substantial proprietary interest falling within the scope of Article 1 of Supplementary Protocol No 1 to the Convention for the Protection of Human Rights and Fundamental Freedoms.

7. The so-called "clause de stage" of the basic pension scheme for lawyers, described in paragraph 5, constitutes an interference with the property rights of insured persons who are members of the scheme, in that it affects the core pension rights, by depriving them of a retirement pension if they do not have the required period of insurance. This interference is contrary to the principles governing the organisation of compulsory basic pension schemes, which includes the lawyers' pension scheme. In particular, it is contrary to the contributory nature of the schemes set out in Article L. 111-2-1, II, paragraph 1 of the Social Security Code and to the rules on coordination between schemes for the benefit of insured persons who have been covered simultaneously or successively by several schemes during their career.

8. This interference is supported by legal and regulatory provisions of domestic law which are accessible, precise and foreseeable, and pursues an aim in the general interest insofar as it contributes to the financial balance of the pension scheme concerned.

9. However, for an insured person who does not have sixty quarters of insurance contributions - a significant period in terms of the length of a professional career - the "clause de stage" only provides a fraction of the allowance for older salaried workers as payment. This is a clearly disproportionate amount with relation to the total contributions payable during the period in which the rights are constituted. Although the "clause de stage" contributes to the financial balance of the pension scheme concerned, it excessively infringes the guaranteed fundamental right with respect to the purpose it pursues, and does not strike a fair balance between the interests involved. Consequently, the application of the above-mentioned Articles L. 723-11 and R. 723-37, 3° of the Social Security Code must be dismissed.

10. In order to reject the insured's claim, the ruling, based on these latter provisions, essentially held that the insured only had fifty-eight quarters of contributions to the Caisse and that it followed that the pension settlement communicated to him had been duly issued.

11. In so ruling, the cour d'appel (Court of Appeal) infringed the above-mentioned texts.

ON THESE GROUNDS, without having to rule on the plea of the appeal, the

Court:

QUASHES AND SETS ASIDE the ruling of the cour d'appel (Court of Appeal) of Paris of 13 June 2019, between the parties, except where it confirms the judgement tribunal de grande instance (Tribunal of First Instance) of Paris dismissing the request for judicial mediation submitted by Mr [X];

Returns, except on this point, the case and the parties to the status existing prior to the said ruling and refers them to the cour d'appel (Court of Appeal) of Paris, otherwise composed;

President: Mr Pireyre

Reporting Judge: Ms Vigneras, Judge Referee

Advocate-General: Mr Gaillardot, First Advocate-General

Lawyer(s): SCP Gaschignard - SCP Gatineau, Fattaccini et Rebeyrol

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Translated rulings